

**APPENDIX A: Parties Filing Petitions for Reconsideration, Oppositions and Replies
to the MSS Second Report and Order in ET Docket No. 95-18**

Petitions for Reconsideration or Clarification:

1. Fixed Wireless Communications Coalition, Critical Infrastructure Communications Coalition, *et al.* (Joint Petitioners)
2. SBC Communications Inc
3. Enron North America Corp. (Enron)
4. Society of Broadcast Engineers, Inc. (SBE)
5. National Association of Broadcasters and the Association for Maximum Service Television, Inc. (NAB/MSTV)
6. Cosmos Broadcasting Corporation, Cox Broadcasting, Inc., and Media General, Inc. (Broadcast Filers)
7. Celsat America, Inc. (Celsat)

Oppositions/Responses/Comments Filed During Opposition Period:

1. ICO Services Limited (ICO)
2. NAB/MSTV

Reply Comments:

1. Joint Petitioners
2. NAB/MSTV
3. Broadcast Filers
4. Arkansas Broadcasters Association

APPENDIX B: Final Rules

For the reasons discussed above, the Federal Communications Commission amends 47 CFR parts 2, 74, 78 and 101 as follows:

PART 2 – FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended by revising footnotes NG156, NG168, NG177 and NG178 in the list of non-Federal Government (NG) Footnotes to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

NON-FEDERAL GOVERNMENT (NG) FOOTNOTES

* * * * *

NG156 The band 2000-2020 MHz is also allocated to the fixed and mobile services on a primary basis for facilities where the receipt date of the initial application was prior to June 27, 2000, and on a secondary basis for all other initial applications. Not later than [date of publication in the *Federal Register* + 10 years], the band 2000-2020 MHz is allocated to the fixed and mobile services on a secondary basis.

* * * * *

NG168 The band 2180-2200 MHz is also allocated to the fixed and mobile services on a primary basis for facilities where the receipt date of the initial application was prior to January 16, 1992, and on a secondary basis for all other initial applications. Not later than [date of publication in the *Federal Register* + 10 years], the band 2180-2200 MHz is allocated to the fixed and mobile services on a secondary basis.

* * * * *

NG177 In the bands 1990-2000 MHz and 2020-2025 MHz, where the receipt date of the initial application for facilities in the fixed and mobile services was prior to June 27, 2000, said facilities shall operate on a primary basis and all later-applied-for facilities shall operate on a secondary basis to any service licensed pursuant to the allocation adopted in FCC 03-16, 68 Fed Reg 11986, March 13, 2003 (“Advanced Wireless Services”). Not later than [date of publication in the *Federal Register* + 10 years], all such facilities in the bands 1990-2000 MHz and 2020-2025 MHz shall operate on a secondary basis to Advanced Wireless Services.

NG178 In the band 2165-2180 MHz, where the receipt date of the initial application for facilities in the fixed and mobile services was prior to January 16, 1992, said facilities shall operate on a primary basis and all later-applied-for facilities shall operate on a secondary basis to any service licensed pursuant to the allocation adopted in FCC 03-16, 68 Fed Reg 11986, March 13, 2003 (“Advanced Wireless Services”). Not later than [date of publication in the *Federal Register* + 10 years], all such facilities in the band 2165-2180 MHz shall operate on a secondary basis to Advanced Wireless Services.

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**PART 74 – EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCASTING AND OTHER
PROGRAM DISTRIBUTIONAL SERVICES**

1. The authority citation for Part 74 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

2. Section 74.602 is amended to revise section (a)(3) and remove and reserve section (a)(4) to read as follows:

§ 74.602 Frequency assignments.

(a) * * *

(3)(i) After [30 days after publication in the Federal Register], stations may adhere to the channel plan specified in paragraph (a) of this section, or the following channel plan in Band A:

Channel A1r---2025.5-2037.5 MHz
Channel A2r---2037.5-2049.5 MHz
Channel A3r---2049.5-2061.5 MHz
Channel A4r---2061.5-2073.5 MHz
Channel A5r---2073.5-2085.5 MHz
Channel A6r---2085.5-2097.5 MHz
Channel A7r---2097.5-2109.5 MHz

(ii) Stations adhering to the channel plan specified in paragraph (a)(3)(i) of this section may also use the following 40 data return link (DRL) channels to facilitate their operations in the 2025.5-2109.5 MHz band:

Lower band DRL channels

2025.000-2025.025 MHz
2025.025-2025.050 MHz
2025.050-2025.075 MHz
2025.075-2025.100 MHz
2025.100-2025.125 MHz

2025.125-2025.150 MHz
2025.150-2025.175 MHz
2025.175-2025.200 MHz
2025.200-2025.225 MHz
2025.225-2025.250 MHz

2025.250-2025.275 MHz
2025.275-2025.300 MHz
2025.300-2025.325 MHz
2025.325-2025.350 MHz
2025.350-2025.375 MHz

2025.375-2025.400 MHz
2025.400-2025.425 MHz
2025.425-2025.450 MHz
2025.450-2025.475 MHz
2025.475-2025.500 MHz

Upper band DRL channels

2109.500-2109.525 MHz
2109.525-2109.550 MHz
2109.550-2109.575 MHz
2109.575-2109.600 MHz
2109.600-2109.625 MHz

2109.625-2109.650 MHz
2109.650-2109.675 MHz
2109.675-2109.700 MHz
2109.700-2109.725 MHz
2109.725-2109.750 MHz

2109.750-2109.775 MHz
2109.775-2109.800 MHz
2109.800-2109.825 MHz
2109.825-2109.850 MHz
2109.850-2109.875 MHz

2109.875-2109.900 MHz
2109.900-2109.925 MHz
2109.925-2109.950 MHz
2109.950-2109.975 MHz
2109.975-2110.000 MHz

(iii) Broadcast Auxiliary Service, Cable Television Remote Pickup Service, and Local Television Transmission Service licensees in Nielsen Designated Market Areas (DMAs) 1-30, as such DMAs existed on September 6, 2000, will be required to use the Band A channel plan in paragraph (a)(3)(i) of this section after completion of relocation by an Emerging Technologies licensee in accordance with § 74.690 of this chapter. Licensees declining relocation and licensees in Nielsen DMAs 31-210, as such DMAs existed on September 6, 2000, will be required to discontinue use of the 1990-2025 MHz on the date that the first Mobile-Satellite Service licensee begins operations in the 2000-2020 MHz band

(4) [removed and reserved]

* * * * *

3. Section 74.690 is amended to revise sections (a),(b), and (e) to read as follows:

§ 74.690 Transition of the 1990-2025 MHz band from the Broadcast Auxiliary Service to emerging technologies.

(a) Licensees proposing to implement Mobile-Satellite Services using emerging technologies (MSS Licensees) may negotiate with Broadcast Auxiliary Service licensees operating on a primary basis and fixed service licensees operating on a primary basis in the 1990-2025 MHz band (Existing Licensees) for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to the 2025-2110 MHz band, to other authorized bands, or to other media; or, alternatively, would discontinue the use of the 1990-2025 MHz band when MSS operations commence in the 2000-2020 MHz band..

(b) An Existing Licensee in the 1990-2025 MHz band allocated for licensed emerging technology services will maintain primary status in the band until the Existing Licensee's operations are relocated by a MSS Licensee or are discontinued under the terms of paragraph (a), above

* * *

(e) Subject to the terms of this paragraph (e), the relocation of Existing Licensees will be carried out in the following manner:

(1) Existing Licensees and MSS licensees may negotiate individually or collectively for relocation of Existing Licensees to one of the channel plans specified in § 74.602(a)(3) of this chapter. Parties may not decline to negotiate, though Existing Licensees may decline to be relocated.

(i) MSS licensees must relocate all Existing Licensees in Nielsen Designated Market Areas (DMAs) 1-30, as such DMAs existed on September 6, 2000, and all fixed stations operating in the 1990-2025 MHz band on a primary basis, prior to beginning operations, except those Existing Licensees that decline relocation. Such relocation negotiations shall be conducted as "mandatory negotiations," as that term is used in § 101.73 of this Chapter. If these parties are unable to reach a negotiated agreement, MSS Licensees may involuntarily relocate such Existing Licensees and fixed stations after **[date of publication in the Federal Register + one year]**.

(ii) On the date that the first MSS licensee begins operations in the 2000-2020 MHz band, Broadcast Auxiliary Service licensees and fixed service licensees that are not operating on the new channel plan specified in § 74.602(a)(3) of this chapter must discontinue use of all operations in the 1990-2025 MHz band.

(iii) On the date that the first MSS licensee begins operations in the 2000-2020 MHz band, a one-year mandatory negotiation period begins between MSS licensees and Existing Licensees in Nielsen DMAs 31-210, as such DMAs existed on September 6, 2000. After the end of the mandatory negotiation period, MSS licensees may involuntarily relocate any Existing Licensees with which they have been unable to reach a negotiated agreement. As described elsewhere in this paragraph (e), MSS Licensees are obligated to relocate these Existing Licensees within the specified three- and five-year time periods.

(2) Before negotiating with MSS licensees, Existing Licensees in Nielsen Designated Market Areas where there is a BAS frequency coordinator must coordinate and select a band plan for the market area. If an Existing Licensee wishes to operate in the 2025-2110 MHz band using the channels A03-A07 as specified in the Table in Section 74.602(a) of this Part, then all licensees within that Existing Licensee's market must agree to such operation and all must operate on a secondary basis to any licensee operating on the channel plan specified in Section 74.602(a)(3) of this Part. All negotiations must produce solutions that adhere to the market area's band plan.

(3) [removed and reserved]

(4) [removed and reserved]

(5) As of the date the first MSS licensee begins operations in the 1990-2025 MHz band, MSS Licensees must relocate Existing Licensees in DMAs 31-100, as they existed as of September 6, 2000, within three years, and in the remaining DMAs, as they existed as of September 6, 2000, within five years.

(6) On **[date of publication in the Federal Register + ten years]**, all Existing Licensees will become secondary in the 1990-2025 MHz band. Upon written demand by any MSS licensee, Existing Licensees must cease operations in the 1990-2025 MHz band within six months.

PART 78 – CABLE TELEVISION RELAY SERVICE

1. The authority citation for Part 78 continues to read as follows:

AUTHORITY: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

2. Section 78.18 is amended to revise section (a)(6) to read as follows:

§ 78.18 Frequency assignments.

(a) * * *

(6) * * *

(i) * * *

(ii) After a licensee has been relocated in accordance with the provisions of § 78.40, operations will be in the band 2025-2110 MHz. The following channel plan will apply, subject to the provisions of § 74.604 of this chapter:

Frequency Band (MHz)

2025.5-2037.5

2037.5-2049.5

2049.5-2061.5

2061.5-2073.5

2073.5-2085.5

2085.5-2097.5

2097.5-2109.5

* * * * *

3. Section 78.40 is amended revise section (f) to read as follows:

* * * * *

(f) Subject to the terms of this paragraph (f), the relocation of Existing Licensees will be carried out in the following manner:

(1) Existing Licensees and MSS licensees may negotiate individually or collectively for relocation of Existing Licensees to one of the channel plans specified in §74.602(a)(3) of this chapter. Parties may not decline to negotiate, though Existing Licensees may decline to be relocated.

(i) MSS licensees must relocate all Existing Licensees in Nielsen Designated Market Areas (DMAs) 1-30, as such DMAs existed on September 6, 2000, prior to beginning operations, except those Existing Licensees that decline relocation. Such relocation negotiations shall be conducted as “mandatory negotiations,” as that term is used in § 101.73 of this Chapter. If these parties are unable to reach a negotiated agreement, MSS Licensees may involuntarily relocate such Existing Licensees after [date of publication in the Federal Register + one year].

(ii) On the date that the first MSS licensee begins operations in the 2000-2020 MHz band, Broadcast Auxiliary Service licensees and fixed service licensees that are not operating on the new channel plan

specified Section 78.18(a)(6)(ii) of this Part must discontinue use of all operations in the 1990-2025 MHz band.

(iii) On the date that the first MSS licensee begins operations in the 2000-2020 MHz band, a one-year mandatory negotiation period begins between MSS licensees and Existing Licensees in DMAs 31-210, as such DMAs existed on September 6, 2000. After the end of the mandatory negotiation period, MSS licensees may involuntarily relocate any Existing Licensees with which they have been unable to reach a negotiated agreement. As described elsewhere in this paragraph (f), MSS Licensees are obligated to relocate these Existing Licensees within the specified three- and five-year time periods.

(2) Before negotiating with MSS licensees, Existing Licensees in Nielsen Designated Market Areas where there is a BAS frequency coordinator must coordinate and select a band plan for the market area. If an Existing Licensee wishes to operate in the 2025-2110 MHz band using the channel plan specified in Section 78.18(a)(6)(i) of this Part, then all licensees within that Existing Licensee's market must agree to such operation and all must operate on a secondary basis to any licensee operating on the channel plan specified in Section 78.18(a)(6)(ii) of this Part. All negotiations must produce solutions that adhere to the market area's band plan.

(3) [removed and reserved]

(4) [removed and reserved]

(5) As of the date the first MSS Licensee begins operations in the 1990-2025 MHz band, MSS Licensees must relocate Existing Licensees in DMAs 31-100, as they existed as of September 6, 2000, within three years, and in the remaining DMAs, as they existed as of September 6, 2000, within five years.

(6) On [date of publication in the Federal Register + ten years], all Existing Licensees will become secondary in the 1990-2025 MHz band. Upon written demand by any MSS Licensee, Existing Licensees must cease operations in the 1990-2025 MHz band within six months.

4. In Section 78.103(e), the table is amended by revising footnote 1 to read as follows:

¹ After a licensee has been relocated in accordance with § 78.40, the maximum authorized bandwidth in the frequency band 2025 to 2010 MHz will be 12 megahertz.

PART 101 – FIXED MICROWAVE SERVICES

The authority citation for Part 101 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303.

Section 101.69 is amended by revising paragraph (d) to read as follows:

§ 101.69 Transition of the 1850-1990 MHz, 2110-2150 MHz, and 2160-2200 MHz bands from the fixed microwave services to personal communications services and emerging technologies.

* * * * *

(d) Relocation of FMS licensees in the 2180-2200 MHz band by Mobile-Satellite Service (MSS) licensees, including MSS licensees providing Ancillary Terrestrial Component (ATC) service, will be subject to mandatory negotiations only. Mandatory negotiation periods are defined as follows:

(1) The mandatory negotiation period for non-public safety incumbents will end **[date of publication in the Federal Register + one year]**.

(2) The mandatory negotiation period for public safety incumbents will end **[date of publication in the Federal Register + two years]**.

Section 101.73 is amended by revising paragraph (d) to read as follows:

§ 101.73 Mandatory Negotiations.

* * * * *

(d) Provisions for Relocation of Fixed Microwave Licensees in the 2180-2200 MHz band.

Notwithstanding references to voluntary negotiation periods elsewhere in this section, relocation of FMS licensees in the 2180-2200 MHz band by Mobile-Satellite Service (MSS) licensees (including MSS licensees providing Ancillary Terrestrial Component "ATC" service) will be subject to mandatory negotiations only. Mandatory negotiations will commence on **[30 days after date of publication in the Federal Register]**. Mandatory negotiations will be conducted with the goal of providing the fixed microwave licensee with comparable facilities, defined as facilities possessing the following characteristics:

(1) * * *

(2) * * *

(3) * * *

Section 101.79 is amended by revising the title and paragraph (a) to read as follows:

§ 101.79 Sunset provisions for licensees in the 1850-1990 MHz, 2110-2150 MHz, and 2160-2200 MHz bands.

* * * * *

(a) FMS licensees will maintain primary status in the 1850-1990 MHz, 2110-2150 MHz, and 2160-2200 MHz bands unless and until an ET (including MSS/ATC) licensee requires use of the spectrum. ET licensees are not required to pay relocation costs after the relocation rules sunset (i.e. ten years after the voluntary period begins for the first ET licensees in the service; or, in the case of the 2180-2200 MHz band, ten years after the mandatory negotiation period begins for MSS/ATC licensees in the service). Once the relocation rules sunset, an ET licensee may require the incumbent to cease operations, provided that the ET licensee intends to turn on a system within interference range of the incumbent, as determined by TIA Bulletin 10-F (for terrestrial-to-terrestrial situations) or TIA Bulletin TSB-86 (for MSS satellite-to-terrestrial situations) or any standard successor. ET licensee notification to the affected FMS licensee must be in writing and must provide the incumbent with no less than six months to vacate the spectrum. After the six-month notice period has expired, the FMS licensee must turn its license back into the Commission, unless the parties have entered into an agreement which allows the FMS licensee to continue to operate on a mutually agreed upon basis.

Section 101.99 is removed and redesignated as Section 101.82.

APPENDIX C: Regulatory Flexibility Analysis

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),²¹³ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in each of the following documents: the *Further Notice of Proposed Rulemaking* component of the *First Report and Order and Further Notice of Proposed Rulemaking*²¹⁴ and the *Third Notice of Proposed Rulemaking* component of the *Memorandum Opinion and Order and Third Notice of Proposed Rulemaking and Order*²¹⁵ in ET Docket No. 95-18, the *Notice of Proposed Rulemaking*²¹⁶ in IB Docket No. 01-185, and the *Further Notice of Proposed Rulemaking* component of the *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*²¹⁷ in ET Docket No. 00-258. The Commission sought written public comments on the proposals in the *Further Notice of Proposed Rulemaking*, the *Third Notice of Proposed Rulemaking*, the *Notice of Proposed Rulemaking* and the *Further Notice of Proposed Rulemaking*, including comment on each IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.²¹⁸

A. Need for, and Objectives of, the Third R&O and Third MO&O

2. The goal of the *Third Report and Order and Third Memorandum Opinion and Order* is twofold. First, in the *Third Report and Order*, we modify the rules that new 2 GHz Mobile-Satellite Service (MSS) licensees are to follow when relocating incumbent Broadcast Auxiliary Service (BAS) licensees that currently operate within the 1990-2025 MHz band and when relocating Fixed Service (FS) microwave licensees that currently operate within the 2180-2200 MHz band. For the 1990-2025 MHz band, we immediately initiate Phase II of a planned two-phase relocation plan. In conjunction with the beginning of Phase II, we restart negotiation periods between MSS licensees and BAS incumbents to run for the publication of the *Third Report and Order and Third Memorandum Opinion and Order* in the *Federal Register*. These actions are necessary because the *Third Report and Order*²¹⁹ in ET Docket No. 00-285 reallocated the 1990-2025 MHz band to allow for both MSS licensees and new fixed and mobile

²¹³ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

²¹⁴ Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, ET Docket No. 95-18, *First Report and Order and Further Notice of Proposed Rule Making*, 12 FCC Rcd 7388 (1997).

²¹⁵ Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, ET Docket No. 95-18, *Memorandum Opinion and Order and Third Notice of Proposed Rulemaking and Order*, 13 FCC Rcd 23949 (1998).

²¹⁶ Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band and the 1.6/2.4 GHz Band, IB Docket No. 01-185, *Notice of Proposed Rulemaking*, 16 FCC Rcd 15532 (2001).

²¹⁷ Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 16043 (2001).

²¹⁸ See 5 U.S.C. § 604.

²¹⁹ Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, *Third Report and Order, Third Notice of Proposed Rulemaking, and Second Memorandum Opinion and Order*, 18 FCC Rcd 2223 (2003).

service licensees to occupy the band. The allocation of a portion of the 1990-2025 MHz band to new fixed and mobile services means that MSS licensees will no longer be the only parties involved in the relocation of BAS incumbents that currently occupy the band. MSS licensees will operate in a reduced amount of spectrum from 2000-2020 MHz, and will now need to relocate BAS incumbents from spectrum that was designated as part of Phase II of the BAS relocation plan. Accordingly, incumbent BAS licensees must be relocated of this Phase II spectrum much more quickly that was anticipated when MSS was to occupy the entire 1990-2025 MHz band. It is also necessary to reset the negotiation periods to recognize the initiation of Phase II, the entry of new licensees into the band, and the lack of negotiation that was expected to have taken place between MSS and BAS licensees by this time. For the 2180-2200 MHz band, we affirm that the TIA TSB 10-F interference standard may be used for determining interference from MSS ATC stations to incumbent FS operations in the 2 GHz band. This modification was necessary because the *Order*²²⁰ in IB Docket No. 01-185 allowed MSS licensees to incorporate Ancillary Terrestrial Components into their systems. The 10-F standard is appropriate for the interference analysis of such non-satellite system components.

3. In the *Third Memorandum Opinion and Order*, we both grant and deny petitions for reconsideration and clarification of the above-referenced *First Report and Order and Further Notice of Proposed Rulemaking*. With respect to the 1990-2025 MHz band, we grant petitions and revise the sunset date (*i.e.* the date by which new licensees are no longer obligated to relocate incumbents in the band); require that fixed facilities operating in BAS channels 1 and 2 (1990-2008 MHz and 2008-2025 MHz, respectively) be relocated prior to the initiation of MSS service; and modify the channel plan for the frequency band to which BAS operations will be relocated. We otherwise deny the petitions relating to the 1990-2025 MHz band and retain our previously adopted relocation rules. The changes we adopt are necessary to recognize the entry of new fixed and mobile service licensees in to the 1990-2025 MHz band and the lack of negotiations to date between MSS and BAS licensees; to provide relief to fixed BAS facilities that would otherwise have to cease operation for three years or more; and to provide a new BAS channel plan that promotes efficiencies in equipment manufacture and operation by incorporating uniform channel sizes. For the 2180-2200 MHz band, we adopt a date certain from which FS-MSS negotiations and the sunset date run, and clarify that a transfer or assignment will not affect a FS licensee's relocation rights. We otherwise deny the petitions relating to the 2180-2200 MHz band and retain our previously adopted relocation rules. The changes we adopt are necessary to provide clarity to the relocation process, and serve to reduce the notification requirements for MSS licensees regarding initiation of the negotiation period that were required under the previous relocation rules.

4. Collectively, the rules we adopt in the *Third Report and Order and Third Memorandum Opinion and Order* are designed to allow for the rapid provision of MSS in the 2 GHz band by resolving outstanding issues relating to the relocation of incumbent users in the 1990-2025 MHz and 2180-2200 MHz bands. These actions are based on our response to petitions for reconsideration and clarification filed in the docket, in conjunction with the proposals we set forth in the *Notice of Proposed Rulemaking* in IB Docket No. 01-185 and the *Further Notice of Proposed Rulemaking* component of the *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in ET Docket No. 00-258.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA.

5. There were no comments filed that specifically addressed the rules and policies proposed in

²²⁰ Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, IB Docket No. 01-185, *Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd 1962 (2003), *Errata* (rel. March 7, 2003), *appeal pending*, AT&T Wireless Services, Inc. and Cellco Partnership d/b/a Verizon Wireless v. FCC, No. 03-1191 (D.C. Cir. filed July 8, 2003)

the IRFA.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.

6. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.²²¹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”²²² In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.²²³ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).²²⁴

7. Fixed Microwave Services. Microwave services include both common carrier²²⁵ and private-operational fixed²²⁶ services. The SBA has developed a small business size standard for Cellular and Other Wireless Telecommunication, of which these fixed microwave services are a part, and which consists of all such firms having 1,500 or fewer employees.²²⁷ According to Census Bureau data for 1997, in this category there was a total of 977 firms that operated for the entire year.²²⁸ Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more.²²⁹ Thus, under this size standard, the majority of firms can be considered small.

8. Broadcast Auxiliary Service (BAS). BAS involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the stations). The Commission has not developed a definition of small entities specific to broadcast auxiliary licensees. The U.S. Small Business Administration (SBA) has developed small business size standards, as follows: 1) For TV BAS, we will use the size standard for Television Broadcasting, which consists of all such companies having annual

²²¹ 5 U.S.C. § 604(a)(3).

²²² 5 U.S.C. § 601(6).

²²³ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

²²⁴ 15 U.S.C. § 632.

²²⁵ 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

²²⁶ Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

²²⁷ 13 C.F.R. § 121.201, NAICS code 517212 (changed from 513322 in October 2002).

²²⁸ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 513322 (issued October 2000).

²²⁹ *Id.* The census data do not provide a more precise estimate of the number of firms that have 1,500 or fewer employees; the largest category provided is “Firms with 1,000 employees or more.”

receipts of no more than \$12.0 million;²³⁰ 2) For Aural BAS, we will use the size standard for Radio Stations, which consists of all such companies having annual receipts of no more than \$6 million;²³¹ 3) For Remote Pickup BAS we will use the small business size standard for Television Broadcasting when used by a TV station and that for Radio Stations when used by such a station.

9. According to Commission staff review of BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of \$12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations²³² must be included.²³³ Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV).²³⁴ Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA size standard. According to Commission staff review of BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States had revenue of \$6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and, that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations²³⁵ are included.²³⁶ Our estimate, therefore, likely overstates the number of small businesses that might be affected by our action.

10. Cable Antenna Relay Service (CARS). CARS includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has developed a small business size standard for Cable and other Program Distribution, which consists of all such companies having annual receipts of no more than \$12.5 million. According to Census Bureau data for 1997, there were 1,311 firms within the industry category Cable and Other Program Distribution, total, that operated for the entire year.²³⁷ Of this total, 1,180 firms had annual receipts of under \$10 million, and an additional 52 firms had receipts of \$10 million to \$24,999,999.00.²³⁸ Thus, under this standard, the majority of firms can be considered small.

11. Geostationary, Non-Geostationary Orbit, Fixed Satellite, or Mobile Satellite Service Operators (including 2 GHz MSS systems). The Commission has not developed a definition of small

²³⁰ 13 C.F.R. § 121.201, NAICS code 515120.

²³¹ *Id.* NAICS code 515112.

²³² "Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 121.103(a)(1).

²³³ "SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic concern's size." 13 C.F.R. § 121.103(a)(4).

²³⁴ FCC News Release, "Broadcast Station Totals as of September 30, 2002" (Nov. 6, 2002).

²³⁵ "Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both." 13 C.F.R. § 121.103(a)(1).

²³⁶ "SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size." 13 C.F.R. § 121.103(a)(4).

²³⁷ 13 C.F.R. § 121.201, NAICS code 517510 (changed from 513220 in October 2002).

²³⁸ *Id.*

entities applicable to geostationary or non-geostationary orbit, fixed-satellite or mobile-satellite service operators. The SBA has developed a small business size standard for Satellite Telecommunications Carriers, which consists of all such companies having \$12.5 million or less in annual receipts.²³⁹ According to Census Bureau data for 1997, there were 324 firms that operated for the entire year.²⁴⁰ Of this total, 273 firms had annual receipts under \$10 million, and an additional twenty-four firms had annual receipts of \$10 million to \$24,999,990.²⁴¹ Thus, under this size standard, the majority of firms can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

12. The *Third Report and Order and Third Memorandum Opinion and Order* modifies relocation rules that were originally adopted in the *Second Report and Order and Second Memorandum Opinion and Order* in this docket. To a large degree, the item contains no new reporting, recordkeeping, or other compliance requirements. For example, we retain the requirement that all BAS operations in markets 1-30 be relocated prior to the initiation of MSS in the band; decline to change the qualifications by which a BAS licensee is eligible for relocation; continue to permit BAS licensees to operate on a 17-megahertz wide channel plan within the reduced BAS spectrum band if all licensees within a market so choose; and do not alter the relocation process for FS licensees (such as adding provisions to permit self-relocation or adopting “rolling” negotiation periods). Because we previously addressed the reporting, recordkeeping, and other compliance requirements associated with these matters as part of the FRFA adopted in the *Second Report and Order and Second Memorandum Opinion and Order*, we incorporate by reference those aspects of the reporting and other compliance requirements that remain unchanged.

13. Our decision herein, however, modifies several dates associated with the relocation of BAS and FS incumbents. Specifically, the duration of the mandatory negotiation period for BAS markets 1-30, FS stations, and the sunset date are all based on the publication date of the item in the *Federal Register*. We previously froze the mandatory negotiation period for BAS relocation – originally scheduled to end on September 6, 2003 – because of unresolved issues relating to MSS deployment had limited the negotiations between MSS and BAS licensees.²⁴² Because this *Third Report and Order and Third Memorandum Opinion and Order* adopts rules and procedures that will allow the relocation of BAS and FS licensees to continue, we establish new dates associated with relocation of BAS and FS incumbents. Because the new dates are designed to afford parties that are involved in the relocation with time frames that are substantially similar to those that were previously adopted, the change in dates will have no adverse impact on all parties involved in the relocation, including smaller entities.

14. The initiation of Phase II of the BAS relocation and the requirement that all fixed BAS stations operating on channels 1 and 2 be relocated prior to the initiation of MSS operations both have the potential to affect the compliance burdens associated with relocation. The initiation of Phase II of the relocation process will reduce the overall relocation burdens for MSS by eliminating the expense and reporting requirements that are associated with Phase I. There will be no disruption and no uncertainty for BAS licensees because the rules adopted herein provide sufficient time for fixed facilities to relocate without losing their ability to operate on their existing primary status.

²³⁹ 13 C.F.R. § 121.201, NAICS code 517410 (changed from 513340 in October 2002).

²⁴⁰ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Receipt Size of Firms Subject to Federal Income Tax: 1997,” Table 4, NAICS code 513340 (issued October 2000).

²⁴¹ *Id.*

²⁴² Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for use by the Mobile-Satellite Service, ET Docket No. 95-18, *Order*, 17 FCC Rcd 15141 (2002).

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

15. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”²⁴³

16. In response to Petitions for Reconsideration of the *Second Report and Order and Second Memorandum Opinion and Order*, we concluded that the temporary loss of BAS channels 1 and 2 during relocation would have the potential to disrupt fixed BAS operations and uniquely burden licensees. For example, loss of the studio-to-transmitter links would likely necessitate television broadcast stations to obtain alternate facilities to transport their signal to their transmitter for broadcast. Otherwise, these licensees would have to wait for as many as five years before their facilities would be relocated. Because we are reluctant to impose such a delay which would unacceptably jeopardize television operations that rely on fixed BAS facilities on channels 1 and 2, we decline to exempt smaller entities from the rule requiring the rapid relocation of these facilities.

17. We retained the general rule that staggers the relocation of BAS facilities based on a market-size approach. Under this rule, the burden of MSS entrants to relocate BAS facilities is staggered over time, based on the size of a particular BAS market. Unlike mobile BAS operations, which can typically be tuned to operate on different channels, fixed BAS facilities are tuned to a single channel. Because of the importance of these fixed channels and because the temporary loss of channels 1 and 2 could uniquely impair operations for BAS licensees with fixed facilities tuned to these channels, we concluded that such facilities should be relocated without delay. We also rejected proposals that would have MSS relocate all BAS facilities, regardless of their fixed or mobile status or the size of market in which they operate. Although this action would have provided the same relief for fixed BAS facilities operating on channels 1 and 2, a wholesale front-loaded relocation of all BAS facilities would have imposed significant burdens on MSS licensees, including those MSS licensees that are small entities.

F. Report to Congress

18. The Commission will send a copy of the *Third Report and Order and Third Memorandum Opinion and Order* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.²⁴⁴ In addition, the Commission will send a copy of the *Second Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this *Third Report and Order and Third Memorandum Opinion and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.²⁴⁵

²⁴³ 5 U.S.C. § 603(c)(1)-(c)(4).

²⁴⁴ See 5 U.S.C. § 801(a)(1)(A).

²⁴⁵ See 5 U.S.C. § 604(b).

**APPENDIX D: BAS/LTTS/CARS Licenses operating in existing BAS channels
in the 1990-2110 MHz and 2450-2500 MHz Bands**

ULS Search Conducted on April 18, 2003													
Radio Service	BAS Channel												
	A1	A2	A1+A2	A3	A4	A5	A6	A7	A1-A7 Total	A8	A9	A10	Total
TV Studio Transmitter Link (TS)	56	32	88	26	40	39	72	37	302	12	7	1	322
TV Intercity Relay (TI)	150	123	273	141	114	136	294	182	1140	52	39	23	1254
TV Translator Relay (TT)	17	11	28	18	20	19	31	29	145	2	1	1	149
Local Television Transmission (CT)	32	34	66	34	34	35	34	34	237	30	30	1	298
Total Number of Fixed BAS & LTTS Stations	255	200	455	219	208	229	431	282	1824	96	77	26	2023
Common Carrier Point-to-Point Microwave (CF)	37	5	42	2	2	2	12	11	71	2	2	0	75
Broadcast Auxiliary Low Power (LP)	0	0	0	1	1	1	0	0	3	0	0	0	3
TV Microwave Booster (TB)	1	0	1	0	0	0	1	0	2	0	0	0	2
Aural Intercity Relay (AI)	1	0	1	0	0	0	0	0	1	0	0	0	1
Microwave Public Safety Pool (MW)	0	0	0	0	1	0	1	1	3	62	50	0	115
Total Number of Fixed Station Licenses	294	205	499	221	212	232	445	294	1904	160	129	26	2219
TV Pickup (TP)—Center Frequency Search	3	7	10	7	7	6	7	8	55	—	—	—	55
Total No. of Licenses in the Fixed and Mobile Services	297	212	509	228	219	238	452	302	3412	456	393	100	2285
TV Pickup (TP) (Bandedge-to-bandedge licenses)	1559 TP licenses, each for the band 1990-2110 MHz (A1-A7)									296	264	94 grand-fathered	3830
	1603 TP licenses, each for the bands 1990-2110 MHz & 2450-2483.5 MHz (A1-A9)									313			
	1611 TP licenses, each for the bands 1990-2110 MHz & 2450-2500 MHz (A1-A10)												
CARS Mobile (Bandedge-to-bandedge licenses)	10 CARS licenses, each for the band 1990-2110 MHz (A1-A7), plus one CARS license for A4-A6									0			3841

Note: The totals shown here overstate the actual number of stations in operation. If a license authorizes operation on frequencies used by more than one BAS channel, that license will be included in the total count in each applicable BAS Channel column. This chart also includes licenses that operate on a secondary basis, which are not eligible for relocation at the expense of MSS licensees.